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No. 07-216

IN THE

Supreme Court of the United States

ANDREW J. ORKIN, F. MARK ORKIN
and SARAH-ROSE JOSEPHA ADLER,

Petitioners,

v.

ELIZABETH TAYLOR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF B'NAI BRITH CANADA AND THE SOUTH AFRICAN JEWISH BOARD OF DEPUTIES AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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OTHER AUTHORITIES

Lea Baider et al., Transmission of Response to Trauma? Second-Generation Holocaust Survivors' Reaction to Cancer, 157 Am. J. Psychiatry 904 (2000) 11

Michael Bazyler, The Holocaust Restitution Movement in Comparative Perspective, 20 Berkeley J. Intl L. 101 (2002) 7

Michael J. Bazyler, Holocaust Justice: The Battle for Restitution in America's Courts (2003) 8, 13

Cited Authorities

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Derek Brown, Litigating the Holocaust: A Consistent Theory in Tort For The Private Enforcement of Human Rights Violations, 27 Pepp. L. Rev. 533 (2000) 11

Sue Choi, Legal Landscape of the International Art Market After Republic of Austria v. Altmann, 26 Nw. J. Int'l L. & Bus. 167 (2005) 7

Shamai Davidson, Transgenerational Transmission in the Families of Holocaust Survivors, 1 International J. Family Psychiatry 98 (1980) 10

Michelle Falkenstein, Far from the Goal, ARTNews, December, 2006 at 130 9

F. Hogman, Trauma and Identity Through Two Generations of the Holocaust, 85 Psychoanal. Rev. 551 (1998) 10

H. Klein and I. Kogan, Identification Processes and Denial in the Shadow of Nazism, 67 Int. J. Psychoanal. 45 (1986) 11

Letter, September 25, 1998. B'nai Brith International to The Honorable Joseph Bruno, Majority Leader, New York State Senate. 7

Joanne Levine, Working with Victims of Persecution: Lessons from Holocaust Survivors, 46 Social Work 4 (2001) 11

Cited Authorities

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William G. Niederland, The Problem of the Survivor: Some Remarks on the Psychiatric Evaluation of Emotional Disorders in Survivors of Nazi Persecution, 10 Journal of the Hillside Hospital 233 (1961) 10

Walter V. Robinson, "U.S. tracked WWII influx of looted art", Boston Globe, May 9, 1997 at A1 ... 7

Brian Trappler et al., Impact of Early Lifetime Trauma in Later Life: Depression Among Holocaust Survivors 60 Years After the Liberation of Auschwitz, 15 Am. J. Geriatric Psychiatry 79 (2007) 10

John Sigal et al., Some Second Generation Effects of Surviving the Nazi Persecution, 43 Am. J. Orthopsychiatry 320 (1973). 11

INTERNET SITES

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INTERESTS OF THE *AMICI CURIAE*[1]

The *amici curiae* B'nai Brith Canada ("BBC") and South African Jewish Board of Deputies ("SAJBD") both have among their members numerous German-Jewish and other refugees with first-hand experience of the Holocaust, including death camps, slave labor and involuntary dislocation to other countries. These experiences in part define the communities that the *amici* represent, and are a key aspect of the knowledge, aspirations and teachings that they bring to bear in all their activities, including participation in this case.

B'nai Brith Canada is the independent voice of the Canadian Jewish community, which numbers approximately 348,000, and is the fourth largest Jewish community in the world, after the United States, Israel and France. BBC represents the Canadian Jewish community's interests in Canada and internationally to government, NGO's and the wider public. Since 1875, it has been respected for its groundbreaking work on matters relating to anti-Semitism, racism and human rights, its strong advocacy on the pressing civil rights issues of the day, and the important social services it provides. The organization is maintained through the generosity of Canadians who value its independence and integrity, as well as its non-partisan, inclusive approach.

Through its agency the League for Human Rights, B'nai Brith Canada counters hate activity and promotes greater

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[1] Pursuant to this Court's Rule 37 subd. 2.(a), all parties have consented to the filing of this brief by the *amici curiae*. Letters evidencing such consent are being filed with the Clerk of the Court with this brief. Pursuant to this Court's Rule 37 subd. 6, the *amici* confirm that no counsel for any party authored this brief in whole or in part, and no person or entity, other than the *amici*, their members and their counsel, made a monetary contribution to the preparation or submission of this brief.

tolerance. Its *Annual Audit of Antisemitic Incidents* is referred to as an authoritative source by government, research institutions and community groups in Canada, United States and elsewhere. League programming, including its *Taking Action Against Hate* and its *Holocaust and Hope* educational seminars, have been key in its ongoing advocacy efforts. Through its agency the Institute for International Affairs, B'nai Brith Canada speaks out on matters affecting the Jewish community and human rights internationally.

The **South African Jewish Board of Deputies** is the central representative institution of South Africa's 100,000 member Jewish community. Most of the country's Jewish congregations, societies and institutions are affiliated with it. The SAJBD was established in 1903-1904, "to watch and take action, with reference to all matters affecting the welfare of Jews as a community." It is the mission of the SAJBD to "work for the betterment of human relations between Jews and all the other peoples of South Africa based on mutual respect, understanding and goodwill. The SAJBD is committed to a new South Africa where everyone will enjoy freedom from the evils of prejudice, intolerance and discrimination." From its beginning more than a century ago, the SAJBD was active in protesting discrimination against Jews in South African immigration and naturalization laws. The Board was later active on behalf of German Jewry and the displaced persons of World War II. The Board maintains contact with other Diaspora Jewish communities around the world – including a large diaspora of South African Jews – and supports those Jews who suffer discrimination, injustice and distress, wherever they may be located.

The principal interest of the *amici* in this case stems from their longstanding commitment to ensuring that anti-Semitism and discrimination are not tolerated, abetted or rewarded, and that the rights and interests of Jews, in Canada, South Africa and everywhere else, are appropriately and justly

recognized and protected. The *amici* strongly believe that the issues of Holocaust restitution that are now emerging worldwide represent a vital continuation of the international and universal moral challenges presented by genocide and discrimination, wherever these acts occur.

This case involves a claim by the heirs of a German Jewish refugee to ownership of a Van Gogh painting now in the collection of Elizabeth Taylor. The petitioners' antecedents fled Nazi persecution in March 1939, arriving in South Africa as part of those few fortunate people who managed to escape the systematic mass extermination that soon engulfed the Jews of Europe. All of the petitioners were born in South Africa. Two are South African citizens and members of the South African Jewish community. One is a Canadian citizen and member of the Canadian Jewish community.

The interest of the *amici* in this case also attests to the unique international dimension of Holocaust art and other restitution claims involving high-value and highly portable items vulnerable to theft during times of war, and the important and internationally recognized role of the United States and its courts in providing moral leadership in addressing these issues.

The *amici* are deeply concerned with the moral and legal Holocaust-related issues raised by this case, and wish to make known their hope, and the reasons therefor, that the petition for *certiorari* be granted, so that this case may be heard on the merits by the Supreme Court of the United States.

SUMMARY OF THE ARGUMENT

The issues of restitution of Holocaust-era looted art raised by this case are of deep interest to a population far broader than the parties alone, in the United States and internationally. Holocaust restitution is a profound and current civil and human rights issue that has been the subject of consistent U.S. policy since the end of World War II.

The issues raised by this case are compelling and timely. The particular and complex equities of Holocaust-era claims remain inadequately recognized by the law in this area. It is only when *all* aspects and equities of this history are fully integrated in a balanced way into the adjudication of these disputes, that the civil and human rights imperatives of Holocaust accountability and redress can at last be met. These equities include the debilitating and complete dislocation and dispersal of European Jewish refugees from Nazi persecution; the psychological and social trauma they and subsequent generations faced; and the overwhelming impediments to investigation and claims, arising from the complexities of the international art market, the unavailability of information, and the obscuring or laundering of key Holocaust-era provenance details.

These equitable factors are raised by the facts as alleged in the current case, and the summary nature of the judgments of the lower courts raise questions of serious concern to the *amici*. The art trade and many of the world's most important art collections are concentrated in the U.S., and decisions of the U.S. courts are looked to and relied upon by courts the world over. It is critical that the Supreme Court of the United States provides coherent and uniform direction on the equitable and just resolution of restitution claims involving Nazi-looted art. It is respectfully submitted that the petition for *certiorari* should therefore be granted in this case.

ARGUMENT

1. THIS CASE IS IMPORTANT TO A FAR BROADER POPULATION, IN THE U.S. AND INTERNATIONALLY , THAN JUST THE PARTIES. THE ISSUES IT RAISES ARE TIMELY AND SHOULD BE ADJUDICATED ON THEIR MERITS.

Holocaust redress- and justice-related issues posed to the Court in this case are of deep concern to Jews all over the world, including the community of Jews represented by the *amici*. Even though the horror of the Holocaust was experienced more than a half-century ago, the crucially important legal and moral redress questions it raises remain significantly unresolved today. In fact, given the appalling physical, psychological and social dislocation experienced by Holocaust survivors, many of these issues are only now being articulated and pursued.

At the historic Washington Conference on Holocaust-Era Assets which took place in 1998, more than fifty years after the Holocaust, Conference Chairman Judge Abner Mikva said:

> [The] Nazis confiscated art works of individuals as part of a deliberate and premeditated program to enrich their leaders, finance their military aggression, and exterminate an entire people . . . [P]ost-war restitution policies . . . fell short of restoring property to many individuals. We have reached a greater understanding of why restitution issues were dormant for so many years and why they have suddenly reappeared with renewed force, creating a challenge to legal frameworks, all sectors of the art world, and concepts of morality and justice." Concluding statement at the

> Washington Conference, December 3, 1998, http://fcit.usf.edu:16080/Holocaust/resource/assets/concl.htm (last visited September 15, 2007).

The *amici* are interested in ensuring that this special context is not overlooked in the adjudication of Holocaust claims, including in the present case. It is submitted that the particular and complex equities of Holocaust-era claims are not yet being adequately recognized by the law in this area:

> [W]e should not apply rules designed for commercial transactions of societies that operate under the rule of law to people whose property and very lives were taken by one of the most profoundly illegal regimes the world has ever known.
>
> Under Secretary of State and Clinton Administration representative for Holocaust-related issues Stuart E. Eizenstat, Proceedings of the Washington Conference, December 3, 1998, at 418, http://fcit.usf.edu/Holocaust/resource/assets/heac3.pdf (last visited September 15, 2007).

2. HOLOCAUST RESTITUTION IS A PROFOUND AND CURRENT CIVIL AND HUMAN RIGHTS ISSUE: THE HOLOCAUST WAS BOTH A GENOCIDE AND THE LARGEST THEFT IN HISTORY OF ART AND OTHER ASSETS.

As Sidney M. Clearfield, Executive Vice President of B'nai B'rith International observed in September 1998 to the New York State Senate:

> The Holocaust was not only history's biggest mass murder, but also its largest robbery. In addition to

> homes, businesses, bank accounts, insurance policies and even wedding rings and gold tooth fillings, the Nazis and their collaborators plundered a vast quantity of valuable art work from Europe's Jews. Art that Jews had been forced to sell for a pittance, or that simply had been stolen from them, passed through middlemen to established galleries, collectors, and respected museums. (*Letter*, September 25, 1998, B'nai Brith International to The Honorable Joseph Bruno, Majority Leader, New York State Senate)

Given the strong linkages between systematic theft, dispossession and extermination in the Nazi project, restitution of Holocaust-era looted assets must be recognized as an integral part of achieving justice for Holocaust victims. Rabbi Israel Singer of the World Jewish Congress has stated:

> Himmler said you have to kill all the Jews because if you don't kill them, their grandchildren will ask for their property back. The Nazis wanted to strip Jews of their human rights, their financial rights and their rights to life. It was an orderly progression. I want to return to them all their rights. (*quoted in* Michael Bazyler, *The Holocaust Restitution Movement in Comparative Perspective*, 20 Berkeley J. Intl L. 101, 132 (2002)).

The scope of the art pillage during the 1930's and 40's may have been twenty percent of all Western art (Walter V. Robinson, "U.S. tracked WWII influx of looted art", Boston Globe, May 9, 1997 at A1). Sue Choi writes in her 2005 article, *The Legal Landscape of the International Art Market*

After Republic of Austria v. Altmann, 26 Nw. J. Int'l L. & Bus. 167 (2005), that:

> Historians estimate that between $230 and $320 billion in assets were stolen, including an estimated $ 20.5 billion in artwork, as a result of Adolph Hitler's regime during the Second World War. The unprecedented theft of Europe's art collections included more than 240,000 artworks from museums and private collections being displaced, transported and stolen by 1944. It is estimated that the scale of looted European art during the Nazi period exceeded that of all the Napoleonic Wars combined. (footnotes omitted).

The aftermath of this wholesale Nazi theft was and remains on an immense scale, requiring that the international dispersal of vast quantities and billions of dollars of portable high-value assets such as paintings, antiquities and gold be tracked and addressed:

> It took 29,984 railroad cars, according to records from the Nuremberg trials, to transport all the German-stolen art back to Germany. The value of the art plundered during the Holocaust exceeded the value of all artworks in the United States in 1945 . . . The Nazi art confiscation program was the greatest displacement of art in human history. Bazyler, *supra*, at 202.

Because of the scope of the plundering, forced sales and other thefts, countless thousands of artworks were wrongfully taken from Jewish owners. It has been reported that, "[e]stimates of the number of Holocaust-related displaced artworks still missing today, more than 60 years after the

end of World War II, hover around 100,000." Michelle Falkenstein, *Far from the Goal*, ARTNews, December, 2006 at 130.

Amici are interested in ensuring that the contemporary legal framework recognizes the extraordinary enormity and complexity of Holocaust-era art claims, and that it takes into account and properly balances all of the facts and all of the equities arising from this history. It is only when all aspects are integrated in a fully balanced way into the adjudication of these disputes, that the civil and human rights imperatives of Holocaust accountability and redress can be met. The common law of the United States – and also of South Africa and Canada – already embodies the tools required to deliver justice in this regard. They include the principles of *nemo dat qui non habet*, *ex turpi causa*, and *audi alteram partem*, which equitable principles have always followed the law of limitations and laches. In the case of the horror of the Holocaust and the vast value of the property still potentially at issue, these dictates of equity should not be permitted to fall by the wayside.

3. THE COMPLETE DISLOCATION AND DISPERSAL OF EUROPEAN JEWRY WAS A DEBILITATING CONSEQUENCE OF THE HOLOCAUST, AND THIS EXTRAORDINARY CONTEXT SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING THE TIMELINESS OF SUCH CLAIMS.

European Jewish refugees escaped the horrors of the Holocaust by fleeing to the United States, Canada, South Africa and other countries. These newcomers had to re-establish themselves completely wherever they landed, building new homes, often learning new languages and trades, all while trying to restore a sense of normalcy out of the

ashes of destroyed lives. As in the present case, many survivors were aged when they were dispersed as refugees.

The Holocaust scattered the Jewish community around the world. For many newly settled Jews, the process of starting over was all-consuming. Given the constraints of distance, and the burdens of re-establishing their lives, it would be callous and unrealistic to expect the traumatized and dislocated victims of Holocaust persecution to have undertaken the technical effort required to trace and claim lost (and often laundered) assets. This important task now falls on the shoulders of succeeding generations, and this Court should assist them in fulfilling it.

4. THE HORRORS OF THE HOLOCAUST, AND THE ENDURING PSYCHOLOGICAL AND SOCIAL TRAUMA IT CAUSED, ARE A FUNDAMENTAL REASON JUSTIFYING DELAY IN THE EMERGENCE OF HOLOCAUST REDRESS CLAIMS.

In many instances, Jews who survived the Holocaust have been traumatized by their experiences. Feelings of guilt and shame at having survived, or fear of being targeted again, for example, made it difficult for some survivors to discuss their experiences and losses for many years, if at all. These well-documented widespread and lifelong psychological impacts delayed the ability of survivors who had been young at the time of the Holocaust (and also subsequent generations) to bring claims for redress. *See generally* William G. Niederland, *The Problem of the Survivor: Some Remarks on the Psychiatric Evaluation of Emotional Disorders in Survivors of Nazi Persecution*, 10 Journal of the Hillside Hospital 233 (1961); Shamai Davidson, *Transgenerational Transmission in the Families of Holocaust Survivors*, 1 International J. Family Psychiatry 98 (1980); F. Hogman, *Trauma and Identity Through Two Generations of the Holocaust*, 85 Psychoanal. Rev. 551 (1998); Brian Trappler

et al., *Impact of Early Lifetime Trauma in Later Life: Depression Among Holocaust Survivors 60 Years After the Liberation of Auschwitz*, 15 Am. J. Geriatric Psychiatry 79 (2007); H. Klein and I. Kogan, *Identification Processes and Denial in the Shadow of Nazism*, 67 Int. J. Psychoanal. 45 (1986); Joanne Levine, *Working with Victims of Persecution: Lessons from Holocaust Survivors*, 46 Social Work 4 (2001); Lea Baider *et al.*, *Transmission of Response to Trauma? Second-Generation Holocaust Survivors' Reaction to Cancer*, 157 Am. J. Psychiatry 904 (2000); John Sigal *et al.*, *Some Second Generation Effects of Surviving the Nazi Persecution*, 43 Am. J. Orthopsychiatry 320 (1973).

As observed by Derek Brown (*Litigating the Holocaust: A Consistent Theory in Tort For The Private Enforcement of Human Rights Violations*, 27 Pepp. L. Rev. 533 (2000)):

> Many survivors – in 2000 the average age of which is 82 years old – would prefer to leave alone these painful issues. Discussing the horrors of the Holocaust in monetary terms is seen by many survivors as a profit-motivated desecration of the memory of those who perished. (footnotes omitted).

In the case of many other Holocaust survivors, who were already old when the Holocaust displaced them, the opportunity to seek material redress simply never arose. Given the extreme psychological trauma in the years immediately following the Holocaust, the death of first-hand claimants obliterated much of the information that might have enabled their heirs to investigate and initiate claims promptly.

In many cases, Holocaust survivors were not psychologically able to engage in the efforts required to seek the just return of their property, as they had lost so much more as a result of the genocide. In these situations, it is

only as second and third generations learn of their forebears' history, and with the benefit of the passage of time, that they are able to confront the deep trauma and undertake the necessary investigation to press their claims.

The Orkins's case appears to be highly illustrative of this phenomenon. According to the facts presented in the petitioners' filings in the courts below, the owner of the painting in dispute died in South Africa in 1947 at the age of 84, and her immediate heir died in 1964 at the age of 86 after a long illness. The next generation of Holocaust refugees in the family were apparently young when they fled Germany and knew few if any details about the circumstances of the material losses of their grandparent and parents. It is only the next generation of Orkins, apparently prompted and explicitly encouraged by U.S. Government laws, international Holocaust-confiscated art conference principles and other initiatives of the late 1990s, that began investigating its family's Holocaust redress rights and claims. Moreover, it is only after significant investigation that the Orkins appear to have realized that they had a viable claim.

A 20/20 hindsight perspective as to when a claim ought "reasonably" to have been made, based on a vantage point of current understandings and recent advances concerning Holocaust restitution, will perforce systematically ignore and trivialize the enormous challenges that faced Holocaust survivor refugees in the postwar years. It is respectfully submitted that such a hindsight perspective, as appears to have been accepted as the appropriate legal approach in the courts below in this case (with the result that a hearing on the merits was never allowed), risks widespread and repeated unjust results. This is of grave concern to the *amici*.

5. THE INTERNATIONAL DISPERSAL OF NAZI-LOOTED ART INTRODUCED FURTHER IMPEDIMENTS, THE EQUITIES OF WHICH MUST BE RECOGNIZED IN DETERMINING THE TIMELINESS OF RESTITUTION CLAIMS.

Valuable assets owned by European Jews were looted and confiscated by the Nazis, and sold on international markets in Switzerland and other international centers, ultimately "turning up in surprising places" in the United States, South America, Europe and elsewhere. Michael J. Bazyler, *Holocaust Justice: The Battle for Restitution in America's Courts* (2003) at 204 and generally chapter 5. The facts as alleged in this case are emblematic of the complete dispersal of the property that was owned by the Jews of Germany during the Holocaust. That is, the painting was apparently conveyed from Germany via Switzerland, South America and London, to the United States. The dispute over its ownership involves persons in the United States, South Africa, Canada and Australia.

This special context of international dispersal, disappearance, laundering, obscured Holocaust-era provenance details, and the distant resurfacing of Holocaust-era art introduces unique complexities and equities into claims such as those put forward in the present case, which must be fairly taken into account in redressing the impacts of the Holocaust.

International dispersal, and consequent challenges, were expressly recognized in the U.S. Government-led Washington Conference Principles on Nazi-Confiscated Art of 1998. In the preamble to the Principles, the many participating governments stated that "[i]n developing a consensus on non-binding principles to assist in resolving issues relating to the restitution of Nazi-confiscated art, the Conference recognizes that *among participating nations there are*

differing legal systems and that countries act within the context of their own laws" (emphasis added). Nevertheless, six decades after the Holocaust, the Conference devoted one of the eleven fundamental Holocaust-era art principles to the concern of encouraging "Pre-War owners *and their heirs*" to finally "come forward and make known their claims". *See* Washington Conference Principles On Nazi-Confiscated Art, Released in connection with the Washington Conference on Holocaust-Era Assets, Washington, DC, December 3, 1998, *available at http://www.state.gov/p/eur/rt/hlcst/23231.htm* (U.S. Department of State website last visited September 15, 2007) (emphasis added).

The articulation and multinational entrenchment of this particular international principle establishes that the Government of the United States and many other countries recognized that almost 60 years after the Holocaust began there were still broad and insurmountable problems and barriers preventing many Holocaust-era owners or their heirs (the second and subsequent generations) from coming forward to make claims to their Nazi-confiscated art. The problem was perceived by the United States and many other governments involved to be worthy of being explicitly addressed in their Principle 7, which expressly encourages Holocaust-era owners and heirs to come forward to make claims.

6. THE UNITED STATES IS A WORLD LEADER IN EFFORTS REQUIRING RESTITUTION OF STOLEN HOLOCAUST-ERA ASSETS, AND THE IMPERATIVE OF RESTITUTION MUST BE AFFIRMED AND CONTINUED.

Since 1945, with the Nuremberg trials and such laws as Military Government Law No. 59, the United States has shown consistent moral, political and legal leadership on

Holocaust accountability, including restitution for Nazi-era assets which were stolen or changed hands as a result of coercion. This leadership has recently been re-affirmed with the passage of the Holocaust Victims Redress Act, Pub. L. No. 105-108, 112 Stat. 15 (1998) the Nazi War Crimes Disclosure Act, Pub. L. 105-567, 114 Stat. 2865; and the United States Holocaust Assets Commission Act, Pub. L. 105-186, 112 Stat. 611, not tc mention the U.S. Government-led international initiatives resulting in the 1998 Washington Conference Principles on Nazi-Confiscated Art.

At that historic international conference, Under Secretary of State Eizenstat said, "[w]e have moved from sadness and moral outrage, through a clearheaded definition of the issues and problems, to a strong determination to resolve the issues, with more and more countries committing themselves to doing more than what has been done up to now": Proceedings of the Washington Conference, December 3, 1998, *supra*, 415.

Decisions of the Supreme Court of the United States are relied upon by courts the world over. Moreover, the art trade and many of the world's most important art collections are concentrated in the U.S. It is critical that U.S. courts provide coherent and uniform direction on the equitable and just resolution of restitution claims involving Nazi-looted art, regardless of where this art surfaces. This Honorable Court should grant *certiorari* in this case, to allow all of the compelling facts and equities to receive a hearing on their merits.

CONCLUSION

For all of the above reasons, the petition for a writ of *certiorari* should be granted.

Dated: La Mesa, California
September 19, 2007

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